IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1693 of 2006
With
SPECIAL CIVIL APPLICATION No. 1694 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL BABUBHAI SENDHABHAI & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR AMIT C NANAVATI for Petitioner(s) : 1 – 2. [S.C.A. No.1693/2006]
MR SP HASURKAR A.G.P. for Respondent(s) : 1,
None for Respondent(s) : 2,

MR AMIT C NANAVATI for Petitioner(s) : 1 - 2.[S.C.A. No.1694/2006]
MR SP HASURKAR A.G.P. for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 06/02/2006

ORAL COMMON JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. Rule. Mr. S.P. Hasurkar learned A.G.P., waives service of rule on behalf of the respondents. At the request of the learned advocates for the respective parties, the matters are taken up for final hearing today itself.

2. The sole grievance made in these petitions is that the application filed by the petitioners under Section 28 of the Land Acquisition Act [hereinafter referred to as "the Act"] has been rejected on the ground that along with the application certified copy of the award made by the Reference Court is not produced before the concerned authority namely respondent no. 2. Hence, according to the petitioners the said order is erroneous and against the decision given by this Court in number of cases.

3. The petitioners possessed agricultural lands bearing Survey No.105 admeasuring 64 Sq. mtrs and Survey No. 105 admeasuring 10682 Sq. mtrs., situated at village Khorsam, Taluka Chanasma, District Patan. The said lands were required for public purpose, namely for constructing Narmada canal. Notification under Section 4 of the Act was issued on 23rd June, 1995 and declaration under Section 6 of the Act was published on 15th April, 1996. The Special Land Acquisition determined compensation at the rate of Rs.5.10 paise per sq. mtr., for irrigated lands. It is the say of the petitioners that on account of their poor financial condition they could not approach the Reference Court by making application to respondent no. 2 Collector under Section 18 of the Act. However other persons similarly situated and who were adversely affected by the said land acquisition proceedings approached the District Court by making an application under Section 18 of the Act to the Collector and the case were registered as Land Reference Case Nos. 787 of 2002 to 806 of 2002. These cases were for claiming higher compensation. The said Reference cases were heard by the Presiding Officer, 3rd Fast Track Court, at Patan. By his judgment

and award dated 2nd September, 2003, the learned Judge, granted additional compensation of Rs.45=00 per sq.mtr., for the irrigated land together with interest on solatium and all the other statutory benefits. In view of the same, the present petitioners applied for the certified copy of the judgment and award made by the learned Reference Court on 19th November, 2005 and soon thereafter filed application under Section 28A of the Act on 21st November, 2005. The certified copy was received by them on 12th December, 2005. Thus, at the time when the application was submitted the petitioners did not file certified copy of the award but submitted it later. In view of the same, respondent no. 2 who decided the application under Section 28A of the Act on 29th December, 2005, rejected it. The said order is now challenged before us in this petition.

4. It is submitted by Mr. Amit Nanavaty learned advocate for the petitioners that the order passed by respondent no. 2 is erroneous *inasmuch* as there is no need to supply or produce certified copy of the award of the Reference Court before respondent no. 2 along with application under Section 28A of the Act. According to him, it is settled proposition of law that the applicant of application under Section 28A of the Act is not required to submit certified copy of the award unless it is so demanded by the concerned officer. He has placed reliance on the decision rendered by us in Special Civil Application No.23810 of 2005 dated 16th December, 2005. He has also drawn our attention to the said decision, copy whereof is annexed as annexure-E. In the said decision, we have placed reliance on the earlier decision rendered by the Division Bench of this Court in the case of **Chitubhai Naranbhai Patel v. Special Land Acquisition Officer reported in 2005 (1) G.L.H., pg.88** and we have also quoted relevant portion of the said judgment, which is also reproduced hereunder.

> "Production of certified copy of the award along with application as provided under Order 41 R.1 of Civil Procedure Code (i.e. Copy of decree) is not made compulsory either in the Act or in the Rules made thereunder. Therefore, merely because certified copy of the order was not produced along with the application, such application cannot be rejected if the application is filed within three months from the date of the award. However, the petitioner who is producing certified copy is entitled to get the time for getting certified copy is excluded. There may be cases where parties may not be aware of the exact nature of the award of the court and they have to apply and get a certified copy. In order to provide for such situation proviso is included. The proviso of the Act gives no direction that application under Section 28A should always be accompanied with the certified copy."

4.1. Thus, as per the decision of the Division Bench, production of the certified copy along with application under Section 28A of the Act is not required. Mr Nanavaty has also annexed to the petition judgments rendered by the Division Bench which are on the same line. In view of the same, it is obvious that the impugned order passed by respondent no.2 is against the proposition of law laid down by this court. Hence, this order has to be quashed and set aside. Accordingly, the impugned order is quashed and set aside. The matters are remanded to respondent no.2 for his consideration on merits. It would be open to respondent no.2 to examine all the issues involved in the application including the one of limitation. He shall render the decision within three months from the date of receipt of the writ of this petition.

Rule is made absolute to the aforesaid extent. Direct Service is permitted.

[Kshitij R. Vyas, J.]

[Akshay H. Mehta, J.]

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